

§ 1155.24

filed with the Board (addressed to the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street SW., Washington, DC 20423) within 45 days of the filing with the Board of a land-use-exemption-permit application. An original and 10 copies of each comment shall be filed with the Board. A copy of each comment shall be served on applicant or its representative at the time of filing with the Board. Each filing shall contain a certificate of service.

(2) Final comments shall be filed and served on all parties within 30 days of the close of the environmental review. An original and 10 copies of such comments shall be filed with the Board. A copy of each comment shall be served on applicant or its representative at the time of filing with the Board. Each filing shall contain a certificate of service.

(3) Replies to final comments shall be filed and served on all parties no later than 45 days after the close of the environmental review. An original and 10 copies of such replies shall be filed with the Board. A copy of each reply to comments shall be served on applicant or its representative at the time of filing with the Board. Each filing shall contain a certificate of service.

§ 1155.24 Environmental review.

(a) A land-use-exemption permit generally will require the preparation of an EIS. OEA may reclassify the environmental review requirements of land-use-exemption proceedings on a case-by-case basis, pursuant to 49 CFR 1105.6(d).

(b) An applicant for a land-use-exemption permit must submit an Environmental Report, at least 45 days prior to filing a land-use-exemption-permit application, containing the information described at 49 CFR 1105.7 to the extent applicable to solid waste rail transfer facilities. Applicants shall concurrently file a Historic Report containing the information at 49 CFR 1105.8 if applicable. The Environmental Report must also contain a discussion of the five factors for consideration listed at 49 U.S.C. 10909(d)(1) through (5) and address any associated environmental impacts as they relate to the

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facility for which a land-use-exemption permit is sought.

(c) The Board strongly encourages applicants to use third-party contractors to assist OEA in preparing the appropriate environmental documentation in land-use-exemption-permit proceedings. *See* 49 CFR 1105.10(d). The environmental reporting requirements outlined above that would otherwise apply are waived if an applicant hires a third-party contractor, OEA approves the scope of the contractor's work, and the contractor works under OEA's direct supervision. *See* 49 CFR 1105.10(d). If an applicant does not hire an independent third-party contractor, the Board may hire a third-party contractor and charge the costs for the contractor to the applicant. *See* 49 U.S.C. 10909(h).

(d) The Board's procedures set forth in 49 CFR 1105.10 for implementation of environmental laws are controlling unless superseded by provisions in this Part.

(e) An applicant for a land-use-exemption permit must follow the Board's procedures at 49 CFR 1105.9 for compliance with the Coastal Zone Management Act, 16 U.S.C. 1451 through 1465, if that act is applicable.

§ 1155.25 Transfer and termination of a land-use-exemption permit.

(a) A land-use-exemption permit may be transferred from a rail carrier to an acquiring rail carrier without the need for a new application for a land-use-exemption permit if the rail line associated with the solid waste rail transfer facility is transferred to another rail carrier or to an entity formed to become a rail carrier pursuant to authority granted by the Board under 49 U.S.C. 10901, 10902, or 11323. When seeking Board authority under 49 U.S.C. 10901, 10902, or 11323, the applicant(s) shall specifically advise the Board, the municipality, the state, and any relevant political subdivision of a state or federal or state regional planning entity of the jurisdiction in which the solid waste rail transfer facility is located, of the intended transfer. The FEDERAL REGISTER notice concerning the acquisition shall include a statement that a solid waste rail transfer facility with a

Board-issued land-use-exemption permit is included in the acquisition.

(b) When a carrier plans to cease using a facility as a solid waste rail transfer facility, or when a facility is transferred to any party in any manner other than that described in paragraph (a) of this section, the entity that received the land-use-exemption permit must notify the Board, the municipality, the state, and any relevant political subdivision of a state or federal or state regional planning entity of the jurisdiction in which the solid waste rail transfer facility is located, in writing no later than 60 days prior to the proposed cessation or transfer. Upon receipt of that notice, the Board will publish notice in the FEDERAL REGISTER that the land-use-exemption permit will be terminated on the 60th day unless otherwise ordered by the Board.

§ 1155.26 Board determinations under 49 U.S.C. 10909.

(a) *Schedule.* (1) The schedule in paragraph (a)(2) of this section shall govern the process for Board consideration and decisions in land-use-exemption-permit application proceedings from the time the application is filed until the time of the Board's decision on the merits:

(2) At least 45 days prior to filing of application—Environmental Report (and/or Historic Report, if applicable) filed and environmental process initiated pursuant to 49 CFR 1155.24. Within 30 days prior to filing of application—Notice of Intent filed with the Board pursuant to the deadlines and requirements described in 49 CFR 1155.20(b)(3).

(i) Day 0—Application filed.

(ii) Day 20—Due date for Notice of Application to be published in the FEDERAL REGISTER.

(iii) Day 45—Due date for initial comments.

(iv) 30 days after the Final EIS (or other final environmental documentation) is issued by OEA—Due date for final comments.

(v) 45 days after the Final EIS (or other final environmental documentation) is issued by OEA—Due date for replies to final comments.

(3) A decision on the merits will be due 90 days after a full record is developed.

(b) *Standard for review.* (1) The Board will issue a land-use-exemption permit only if it determines that the facility at the existing or proposed location would not pose an unreasonable risk to public health, safety, or the environment. In deciding whether a solid waste rail transfer facility that is or proposed to be constructed or operated by or on behalf of a rail carrier poses an unreasonable risk to public health, safety, or the environment, the Board shall weigh the particular facility's potential benefits to and the adverse impacts on public health, public safety, the environment, interstate commerce, and transportation of solid waste by rail.

(2) The Board will not grant a land-use-exemption permit for a solid waste rail transfer facility proposed to be located on land within any unit of or land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, or a National Monument.

(3) The Board will not grant a land-use-exemption permit for a solid waste rail transfer facility proposed to be located on land within any unit of or land affiliated with lands referenced in The Highlands Conservation Act, Public Law No. 108-421, for which a state has implemented a conservation management plan, if operation of the facility would be inconsistent with restrictions placed on such land.

(4) The Board will reject an application from a person who is not a rail carrier, but is instead operating on behalf of a rail carrier unless:

(i) The applicant has sought permission from the applicable state, local, or municipal authority with respect to some or all of the property in the application and received an unsatisfactory result affecting the siting of the facility, or

(ii) The Governor of the state has petitioned the Board to require the facility to apply under subpart B of this part.

(5) The Board will issue a land-use-exemption permit to an applicant that has received an unsatisfactory result